No. 14-1209

In the Supreme Court of the United States

JOHN STURGEON, PETITIONER

v.

SUE MASICA, IN HER OFFICIAL CAPACITY AS ALASKA REGIONAL DIRECTOR OF THE NATIONAL PARK SERVICE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether Section 103(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3101 *et seq.*, abrogated the National Park Service's authority to regulate the use of hovercraft on all navigable waterways within the National Park System in Alaska.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a-34a) is reported at 768 F.3d 1066. The opinion of the district court (Pet. App. 35a-58a) is not published in the *Federal Supplement* but is available at 2013 WL 5888230.

JURISDICTION

The judgment of the court of appeals was entered on October 6, 2014. A petition for rehearing was denied on December 16, 2014 (Pet. App. 1a-2a). On February 20, 2015, Justice Kennedy extended the time within which to file a petition for a writ of certiorari to and including March 31, 2015, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Congress established the National Park Service (NPS) through the National Park Service Organic Act (Organic Act), 16 U.S.C. 1 *et seq.* That Act directs NPS to "promote and regulate" the national parks in order to "conform to the fundamental purpose of the said parks, * * * which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. 1; see 36 C.F.R. 1.1(b); see also National Park System General Authorities Act, Pub. L. No. 91-383, 84 Stat. 825, 16 U.S.C. 1a-1 *et seq.* The Organic Act authorizes the Secretary of the Interior to promulgate "such rules and regulations as he may deem necessary or proper for the use and management of the parks." 16 U.S.C. 3.[1]

A later enactment expressly provided that the Secretary may regulate activities on waters in the parks, authorizing the Secretary to "[p]romulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States," so long as those regulations do not derogate the authority of the U.S. Coast Guard. 16 U.S.C. 1a-2(h).

Acting under those authorities, NPS has established rules for park lands and waters. Those regula-

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[1] The Act of Dec. 19, 2014, Pub. L. No. 113-287, 128 Stat. 3096, recodified statutory provisions relating to the National Park Service. Pursuant to that enactment, in future editions of the United States Code, National Park Service-related provisions will be located in Title 54.

tions apply to *federally owned* lands and waters in the national parks, and to navigable waters within national parks, but they do not generally apply to privately held, state-held, or Native-held land within park boundaries. Specifically, they apply within "[t]he boundaries of *federally owned* lands and waters administered by the National Park Service," and within the "[w]aters subject to the jurisdiction of the United States located within the boundaries of the National Park System, including navigable waters * * * without regard to the ownership of submerged lands, tidelands, or lowlands." 36 C.F.R. 1.2(a)(1) and (3) (emphasis added). In contrast, the regulations expressly state that they do not generally apply on "non-federally owned lands and waters or on Indian tribal trust lands located within National Park System boundaries." 36 C.F.R. 1.2(b). The regulations apply on private lands only if application is both "necessary to fulfill the purpose of the National Park Service administered interest and compatible with the non-federal interest," 36 C.F.R. 1.2(a)(5), or the regulation is "specifically written to be applicable on such lands," 36 C.F.R. 1.2(b).[2]

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[2] The only regulations promulgated by the Secretary that are applicable to privately held lands within park system units are certain regulations on mining and solid waste disposal, promulgated pursuant to distinct grants of statutory authority. Solid-waste disposal regulations at 36 C.F.R. Part 6 implement a statute directing the Secretary to promulgate regulations in order to ban "solid waste disposal sites" within units of the National Park System, see Act of Oct. 19, 1984, Pub. L. No. 98-506, § 2, 98 Stat. 2338 (16 U.S.C. 460*l*-22(c)); 59 Fed. Reg. 65,949 (Dec. 22, 1994). And regulations at 36 C.F.R. Part 9, which "control all activities within units of the National Park System resulting from the exercise of valid existing mining rights" acquired under federal mining

NPS has promulgated two types of regulations concerning these federally owned lands and navigable waters within national parks. The first type of regulation are regulations applicable in *all* national parks, except those specifically exempted. See 36 C.F.R. 1.2(a). Regulations in this category include rules to address pollution and sanitation, see, *e.g.*, 36 C.F.R. 2.14, 3.13, and rules concerning the introduction and removal of fish, plants, and wildlife, see, *e.g.*, 36 C.F.R. 2.1, 2.2, 2.3, 2.5. A section addressing boating and water use imposes safety, sanitation, and noise requirements for vessels on navigable waters within parks, and limits activities such as water skiing and snorkeling, see 36 C.F.R. 3.1-3.19. The rule at issue in this case—a rule barring "operation or use of hovercraft" on the parks' navigable waters, and on federally owned park lands—is a rule of this type. 36 C.F.R. 2.17(e).[3]

The second type of NPS regulation is limited to the publicly held lands and navigable waters within particular national parks. Part 13 of Title 36 of the Code of Federal Regulations contains the regulations applicable only to national park system units in Alaska—regulations that "supplement the general regulations" in those parks. 36 C.F.R. 13.2(a).

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laws, 36 C.F.R. 9.1, were promulgated pursuant to authorities including the Mining Law of 1872, 30 U.S.C. 21 *et seq.*

[3] "Hovercraft" are devices that are supported by fan-generated air cushions. NPS prohibited use of those devices in park areas in 1983, after determining that hovercraft, which "provide virtually unlimited access to park areas," would "introduce a mechanical mode of transportation into locations where the intrusion of motorized equipment by sight or sound is generally inappropriate." 48 Fed. Reg. 30,258 (June 30, 1983).

b. Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. No. 96-487, 94 Stat. 2371, 16 U.S.C. 3101 *et seq.*, for the purpose of preserving "certain lands and waters in the State of Alaska that contain nationally significant natural, scenic, historic, archeological, geological, scientific, wilderness, cultural, recreational, and wildlife values." 16 U.S.C. 3101(a). The statute declares that:

> It is the intent of Congress in this Act to preserve unrivaled scenic and geological values associated with natural landscapes; to provide for the maintenance of sound populations of, and habitat for, wildlife species of inestimable value to the citizens of Alaska and the Nation, including those species dependent on vast relatively undeveloped areas; to preserve in their natural state extensive unaltered arctic tundra, boreal forest, and coastal rainforest ecosystems; to protect the resources related to subsistence needs; to protect and preserve historic and archeological sites, rivers, and lands, and to preserve wilderness resource values and related recreational opportunities including but not limited to hiking, canoeing, fishing, and sport hunting, within large arctic and subarctic wildlands and on freeflowing rivers; and to maintain opportunities for scientific research and undisturbed ecosystems.

16 U.S.C. 3101(b).[4]

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[4] Congress stated as further objectives that it sought "to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so," 16 U.S.C. 3101(c), and to obviate the need for further legislation to protect lands in Alaska, 16 U.S.C. 3101(d).

ANILCA reserved about 105 million acres of federal land to be administered by NPS for those purposes. See Pet. App. 21a-22a. To do so, ANILCA expanded the boundaries of some of the national parks that had existed prior to ANILCA. Congress explained the purposes of each such expansion—typically including among them the protection of waterways. See, *e.g.*, 16 U.S.C. 410hh-1(1) (expanding Glacier Bay National Monument "[t]o protect a segment of the Alsek River, fish and wildlife habitats and migration routes"); 16 U.S.C. 410hh-1(2) (expanding Katmai National Monument "[t]o protect habitats for, and populations of, fish and wildlife" and "to maintain unimpaired the water habitat for significant salmon populations").

Other ANILCA provisions created new units of the National Park System. Each such provision specified the reasons for the unit's creation, with Congress again typically listing protection of fish and their habitats as one of its objectives. See, *e.g.*, 16 U.S.C. 410hh(7)(a) (creating Lake Clark National Park, for purposes including "[t]o protect the watershed necessary for perpetuation of the red salmon fishery in Bristol Bay"); 16 U.S.C. 410hh(4)(a) (creating Gates of the Arctic National Park, for purposes including "[t]o maintain * * * the natural environmental integrity and scenic beauty of * * * rivers, lakes, and other natural features" and "to protect habitat for and the populations of, fish"). The Yukon-Charley Rivers National Preserve (the Preserve), which includes the lower reaches of the Nation River and a portion of the Yukon River, was among the new park units created by ANILCA. 16 U.S.C. 410hh(10). Congress explained that its objectives in creating the Preserve

included "maintain[ing] the environmental integrity of the entire Charley River basin, including streams, lakes, and other natural features, in its undeveloped natural condition," as well as protecting populations of fish in the Preserve. *Ibid.*

ANILCA provided that the Secretary "shall administer the lands, waters, and interests therein added to existing areas or established by the foregoing sections of this subchapter as new areas of the National Park System," pursuant to the provisions of the Organic Act. 16 U.S.C. 410hh-2. The term "public lands" is used in ANILCA to refer to "lands, waters, or interests therein" which are held by the federal government. See 16 U.S.C. 3102(1)-(3).

ANILCA defined the term "conservation system units," or CSUs, to refer to specific types of public lands located in Alaska. 16 U.S.C. 3102(4) ("The term 'conservation system unit' means any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails Systems, National Wilderness Preservation System, or a National Forest Monument."). Section 103(c) of ANILCA—a portion of a section entitled "Maps" that was added to the bill shortly before enactment—addresses the classification of land within CSUs that is privately held, state-held, or Native-held, and specifically exempts such land from "regulations applicable solely to public lands within such [conservation system] units." 16 U.S.C. 3103(c). The provision states in its entirety:

> Only those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit. No lands

> which, before, on, or after December 2, 1980, are conveyed to the State, to any Native Corporation, or to any private party shall be subject to the *regulations applicable solely to public lands within such units*. If the State, a Native Corporation, or other owner desires to convey any such lands, the Secretary may acquire such lands in accordance with applicable law (including this Act), and any such lands shall become part of the unit, and be administered accordingly.

Ibid. (emphasis added).

2. In 2007, NPS officers observed petitioner repairing a hovercraft inside the Preserve, on a gravel bar adjoining the Nation River. Pet. App. 8a. The officers advised petitioner that hovercraft cannot be operated in the Preserve, *ibid.*, in light of the regulation prohibiting "[t]he operation or use of hovercraft" on the federally-owned land and navigable waters in all national parks, 36 C.F.R. 2.17(e). Petitioner protested, but removed his hovercraft from the Preserve. Pet. App. 8a.

In 2011, petitioner brought this suit in the United States District Court for the District of Alaska, seeking declaratory and injunctive relief preventing NPS from enforcing its hovercraft rule against petitioner on the portions of the Nation River within the Preserve.[4] Pet. App. 9a. Petitioner invoked Section 103(c), which provides that "[n]o lands which * * * are conveyed to the State, to any Native Corporation,

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[4] Petitioner also sought injunctive and declaratory relief regarding NPS's ability to enforce the hovercraft rule to bar his use of a hovercraft on stretches of the Yukon River within national parks, but those claims were dismissed by the district court and petitioner did not appeal that dismissal. See Pet. App. 8a n.1.

or to any private party shall be subject to the regulations applicable solely to public lands within" CSUs, 16 U.S.C. 3103(c). See Compl. ¶¶ 22, 25, 49, 54, 58.

Petitioner claimed that all navigable rivers within national parks in Alaska were "state owned" lands because Alaska (like other States) generally owns *submerged lands* beneath navigable waterways in the State, see Submerged Lands Act, 43 U.S.C. 1311(a). See Compl. ¶¶ 22 & n.2, 25; Pet. App. 52a-53a. Petitioner asserted that, as a result, navigable rivers within national parks in Alaska were themselves state-owned, and NPS could not enforce rules on the navigable rivers within national parks in Alaska.[6] Compl. ¶¶ 22, 25; see Pet. App. 55a-57a.

The district court rejected petitioner's claims, granting summary judgment to respondents. Pet. App. 35a-58a. The court explained that the proper framework for adjudicating the dispute was that of *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), because the dispute involved a challenge to an administrative agency's construction of a statute that it administers. Pet. App. 51a-52a. The court found that petitioner's claim failed at the first step of the *Chevron* analysis, because petitioner's claim was foreclosed by the unam-

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[6] The State intervened and also sought to challenge NPS's enforcement of regulations on navigable rivers within national parks in Alaska, but the court of appeals ordered that the State's complaint be dismissed for lack of standing. See Pet. App. 9a-10a, 14a-20a. The court observed that Alaska had shown no actual injury. It "did not identify any actual conflict between NPS's regulations and its own statutes and regulations." *Id.* at 17a. Nor had it shown any way in which the regulations interfered with any ongoing state activity. *Id.* at 16a. The State has not sought review of that dismissal.

biguously expressed intent of Congress. *Id.* at 52a, 56a-57a.

At the outset, the district court noted that petitioner's claim under Section 103(c) of ANILCA rested on a highly contested premise—that navigable waters on rivers within the National Park System were not "public lands" for purposes of ANILCA. Pet. App. 52a-54a. The court noted that while Alaska owned the *submerged lands* under navigable rivers in the State, this did not mean that the United States lacked any interest in the waters of navigable rivers within the National Park System in Alaska. *Id.* at 54a; see 16 U.S.C. 3102(1), (2), and (3) (defining "public lands" to generally include federally-owned "lands, waters, and interests therein").

In any event, the district court concluded, the language of Section 103(c) of ANILCA foreclosed petitioner's claim, even if Alaska held full title to navigable rivers within the parks, unencumbered by any federal "interest" in those rivers' waters. Pet. App. 55a-57a. The court noted that Section 103(c) exempted lands that have been conveyed to private parties, the State, or Native Corporations from "regulations applicable solely to public lands within [conservation system] units." *Id.* at 55a (citation omitted). That provision did not bar NPS from enforcing its hovercraft rule on navigable waters within national parks in Alaska, the court explained, because the hovercraft rule is "not [a] regulation[] applicable solely to public lands within conservation system units" but is instead a "regulation[] of general application across the entirety of the NPS." *Id.* at 57a.

3. A unanimous panel of the court of appeals affirmed. Pet. App. 3a-34a. Like the district court, it

construed petitioner's claim as an "as-applied" challenge to the enforcement against petitioner of NPS's hovercraft regulation on the navigable waters of the Nation River within the Preserve. *Id.* at 21a n.5, 26a, 38a.

Like the district court, the court of appeals found petitioner's claim that ANILCA barred enforcement of the hovercraft regulation on navigable waters in the national parks to be "foreclosed by the plain text of the statute." Pet. App. 7a. The court of appeals began by discussing ANILCA Section 103(c) and its context. Section 103(c), it explained, addressed the status of privately held, state-held, and Native-held land that falls within the boundaries of CSUs by "clarify[ing] two things: first, what land would actually comprise the CSUs, and second, more generally, how land falling within a CSU's boundaries—whether federally owned or not—could be regulated." *Id.* at 22a.

The first sentence of Section 103(c), the court of appeals explained, clarified that "the boundaries of CSUs 'do[] not in any way change the status of that State, native, or private land' lying within those boundaries.'" Pet. App. 23a (brackets in original) (quoting 125 Cong. Rec. 11,158 (1979)). The third sentence provided a mechanism for the government to acquire new lands for CSUs. *Id.* at 24a. The remaining sentence—the second sentence—limited federal regulatory authority over privately held, state-held, and Native-held land within CSUs in Alaska, by specifying that such lands "shall not be subject to 'regulations applicable solely to public lands within such units.'" *Id.* at 23a-24a (quoting 16 U.S.C. 3103(c)).

The court of appeals "easily resolve[d]" petitioner's claim that this limitation barred NPS from enforcing nationwide park rules (such as the hovercraft rule) on all navigable rivers located within national park units in Alaska. Pet. App. 25a. At the outset, the court noted that Congress had expressly "vested the Secretary of the Interior with the authority to '[p]romulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States." *Ibid.* (brackets in original) (quoting 16 U.S.C. 1a-2(h)). The court concluded that it was unambiguous that ANILCA Section 103(c) did not strip the Secretary of authority under this statute to promulgate rules applicable to navigable waters within areas of the National Park System in Alaska. Section 103(c)'s text "unambiguously foreclose[d] [petitioner's] interpretation," because it "only exempts nonfederal land from 'regulations applicable *solely* to public lands within [CSUs],'" *ibid.* (second set of brackets in original) (quoting 16 U.S.C. 3103(c)). "The regulation at issue" pertaining to hovercraft, the court explained, "is not so limited." *Ibid.* "Rather, this regulation applies to all federal-owned lands and waters administered by NPS nationwide, as well as all navigable waters lying within national parks." *Id.* at 26a.

The court of appeals noted that it ordinarily would not consider legislative history when, as in this case, the statutory text is clear. Pet. App. 27a. The court further noted that "the legislative records from the House and Senate contain numerous statements supporting the plain language of the statute." *Ibid.*; see *id.* at 26a-27a. Finally, the court rejected petitioner's

constitutional avoidance arguments, noting that federal laws regulating navigable waters—far from raising constitutional concerns—are an archetypal exercise of congressional power. *Id.* at 33a-34a (citing cases).

In light of that conclusion, the court of appeals noted it need not decide whether petitioner was correct to treat navigable waters within national parks as lands conveyed to the State for purposes of Section 103(c). Pet. App. 26a & n.6; see *id.* at 34a.

4. The court of appeals denied a petition for rehearing en banc, with no noted dissents and no judge of the court requesting a vote on the petition. Pet. App. 1a-2a.

ARGUMENT

Petitioner renews (Pet. 23-30) his challenge to NPS's enforcement of park rules prohibiting his use of a hovercraft on the navigable waters of the Nation River, within the boundaries of the Yukon-Charley Rivers National Preserve in Alaska. Every judge to consider petitioner's claim has correctly rejected it, and petitioner's claim does not implicate any disagreement among courts of appeals. Moreover, petitioner's claim that this dispute is one of such exceptional importance as to merit this Court's intervention in the absence of any disagreement rests on misunderstandings of NPS's regulations and of the decision below. Further review is not warranted.

1. The court of appeals correctly rejected petitioner's remarkable assertion that NPS cannot enforce any park regulations on the navigable waters within national parks in Alaska, by virtue of ANILCA Section 103(c). From the inception of the National Park System, the Secretary of the Interior has set rules for

navigable waters in national parks, in order to preserve those waters. See 16 U.S.C. 3 (Organic Act authorization to promulgate "such rules and regulations as" the Secretary "may deem necessary or proper for the use and management of the parks."). Congress confirmed this authority in 1970, when it expressly authorized the Secretary to "[p]romulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States." 16 U.S.C. 1a-2(h); see Pet. App. 25a-26a (noting that hovercraft regulation is an exercise of that authority).

Petitioner does not dispute that those provisions ordinarily allow NPS to regulate activities "on or relating to waters located within areas of the National Park System," 16 U.S.C. 1a-2(h). See, *e.g.*, 11-cv-00183 Docket entry No. 77, at 18-19 & n.43 (Jan. 11, 2013) (Pet. Mot. For Summ. J.). Rather, he contends that a provision in ANILCA—a statute the principal objective of which was preserving additional "lands and waters" in Alaska, 16 U.S.C. 3101(a)—withdrew the Secretary's regulatory authority on all the navigable waters within national parks in Alaska, so that within national parks in Alaska (unlike national parks in every other part of the United States), the Secretary lacks the authority to protect rivers through generally applicable rules relating to wildlife and fishing, sanitation, boating, and similar topics.

As both courts below concluded, this argument is plainly without merit. See Pet. App. 25a ("[W]e easily resolve [petitioner's] appeal."); *id.* at 56a-57a (finding petitioner's claim foreclosed by unambiguous text at first step of *Chevron* analysis). Section 103(c) of

ANILCA clarifies the boundaries of CSUs, and then states that "[n]o lands which, before, on, or after December 2, 1980, are conveyed to the State, to any Native Corporation, or to any private party shall be subject to the regulations *applicable solely to public lands within such units*." 16 U.S.C. 3103(c) (emphasis added). That provision does not deny NPS the ability to enforce *nationwide* rules on the navigable waters of national parks in Alaska. As an initial matter, petitioner's assertion that the waters of navigable rivers are "lands * * * conveyed to" Alaska, *ibid.*, is incorrect. Petitioner based his claim on the Submerged Lands Act, 43 U.S.C. 1311(a), which generally gives States title to the submerged lands beneath their navigable waters, and the Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339; see Pet. 15. But those provisions do not mean that the United States lacks any interest in or authority over navigable waters in national parks. See 16 U.S.C. 3102(1), (2), and (3) (defining "public lands" to generally include federally-owned "lands, waters, and interests therein"). Not only does the United States retain "a dominant servitude" in navigable waters, grounded in the Commerce Clause, *United States* v. *Twin City Power Co.*, 350 U.S. 222, 224-225 (1956) (citations omitted), but it has reserved water rights in many navigable rivers within parks—including the waters at issue here. See *John* v. *United States*, 720 F.3d 1214 (9th Cir. 2013) (upholding regulations identifying reserved water rights, as relevant to ANILCA), cert. denied, 134 S. Ct. 1759 (2014); 64 Fed. Reg. 1276, 1279-1280 (Jan. 8, 1999) (specifying waters within Preserve as among those which are public lands, by virtue of reserved water rights); see 36 C.F.R. 242.4, 242.3(c)(28). Those re-

served rights are an "interest[]" in the waters for purposes of ANILCA. *State of Alaska* v. *Babbitt*, 72 F.3d 698, 703-704 (9th Cir. 1995) ("[W]e hold to be reasonable the federal agencies' conclusion that the definition of public lands [under ANILCA] includes those navigable waters in which the United States has an interest by virtue of the reserved water rights doctrine."), cert. denied, 516 U.S. 1036 and 517 U.S. 1187 (1996).

In any event, as both courts below agreed, ANILCA Section 103(c) would not support petitioner's challenge to the application of NPS's hovercraft regulation even if petitioner were correct in his premise that the United States lacks an interest in the navigable waters in national parks within Alaska. See Pet. App. 54a-56a ("[a]ssuming for the sake of discussion" petitioner's property premise, but rejecting petitioner's claim); *id.* at 26a & n.6 (same). Section 103(c) provides that lands within CSUs that are conveyed to the State may not be subjected to "regulations applicable solely to public lands within such units." 16 U.S.C. 3103(c). But as all agree, the rule prohibiting use of hovercraft in national parks is *not* a regulation "applicable solely to public lands within [conservation system] units," *ibid.* Rather, it is a nationwide NPS rule, and as petitioner acknowledges (Pet. 27-28), "nationwide NPS regulations are not 'solely' applicable to federal lands in Alaska." Accordingly, the "unambiguous" text forecloses petitioner's Section-103(c) challenge to the application of the hovercraft regulation on navigable waterways within a national park in Alaska. Pet. App. 25a.[7]

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[7] Petitioner identifies no ambiguity in any of the statutory terms here. He hypothesizes that "Congress inserted 'solely' into Sec-

Considerations of purpose and structure reinforce the meaning of the plain text. ANILCA sets out its purposes expressly. It is principally aimed at nature preservation—including the protection of rivers and of recreational activities such as "canoeing [and] fishing" on "freeflowing rivers." 16 U.S.C. 3101(b). Indeed, ANILCA contemplated that the Secretary would regulate the use of motorboats, see 16 U.S.C. 3121(b), 3170, and fishing, see 16 U.S.C. 3201, within CSUs. But petitioner reads this conservation statute as having forbidden NPS from regulating activities on any navigable waters within national parks in Alaska—making those waters far less protected than such waters anywhere else in the National Park System, where NPS undisputedly may enforce rules relating to sanitation, pollution, fishing, and similar concerns. Indeed, under petitioner's view, this congressionally-proclaimed conservation measure actually withdrew NPS's regulatory authority over the many navigable rivers in Alaska that were located in National Park System units long before ANILCA was enacted. That interpretation is not simply foreclosed by the text—it is completely dissonant with the statute's stated purposes.

Other provisions further highlight this incompatibility. ANILCA provisions designating particular areas as national parks state that they are intended to

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tion 103(c) to avoid inadvertently nullifying *all* federal statutes and regulations applicable to non-federal lands in Alaska." Pet. 28. But "solely" cannot naturally be understood to reach *both* regulations solely applicable to CSUs *and* certain types of other regulations. Had Congress wished to limit NPS's system-wide regulations, Congress could have done so—but that is not the line that Congress drew.

enable NPS to protect fish and their habitats in the newly created park areas. See, *e.g.*, 16 U.S.C. 410hh-1(1) and (2), 410hh(4)(a) and (7)(a). Thus, for example, Congress created the Preserve—the area at issue in this case—for purposes including "maintain[ing] the environmental integrity of the entire Charley River basin, including streams [and] lakes * * * in its undeveloped natural condition," as well as protecting the Preserve's fish population. 16 U.S.C. 410hh(10). It is implausible to suppose that while ANILCA was creating preserves for the protection of fish and their habitats, it was simultaneously stripping NPS of its powers to protect fish and their habitats in any navigable waterway in those same preserves.

Other statutory features bolster the conclusion that Section 103(c) did not withdraw NPS's authority over navigable waters within national parks in Alaska, stripping Alaskan rivers of the protections that navigable waters receive in national parks in every other State. First, there is ANILCA's structure: Because Congress does not "hide elephants in mouseholes," *Whitman* v. *American Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001), it is implausible that a directive of this significance to the statute as a whole would have been "buried" in "the 'maps' section of ANILCA," Pet. App. 42a. Second, there is the legislative history: No Member of Congress advanced the position that Section 103(c) stripped NPS of authority over all the navigable waters in Alaskan national parks—notwithstanding ANILCA's stated purposes of protecting those waters. On the contrary, Section 103(c) was described as a "minor revision[]" to "fine tune" the ANILCA bill. 126 Cong. Rec. 30,498 (1980)

(statement of Rep. Udall); see *id.* at 31,108 (statement of Sen. Stevens).

In any event, petitioner's challenge would fail under *Chevron* principles even if it were not unambiguously foreclosed. The Secretary is entitled to deference to reasonable interpretations of the scope of her authority under ANILCA. See *National Ass'n of Home Builders* v. *Defenders of Wildlife*, 551 U.S. 644, 666 (2007); *City of Arlington, Tex.* v. *Federal Commc'ns Comm'n*, 133 S. Ct. 1863, 1874 (2013); see also Pet. C.A. Br. 20 (acknowledging applicability of *Chevron* framework). For the reasons set forth above, at a bare minimum, Section 103(c) does not unambiguously strip NPS of the ability to regulate navigable waters within the national parks in Alaska. Because the Secretary has expressly rejected such an interpretation of Section 103(c) in regulations that were enacted following notice and comment, 61 Fed. Reg. 35,135 (July 5, 1996), and because the Secretary's interpretation of Section 103(c) is plainly reasonable, petitioner's claim would fail at step two of the *Chevron* analysis.[8]

2. Petitioner's challenge to the application of an NPS hovercraft regulation on navigable waters within the Preserve does not present a question that warrants this Court's intervention. The decision below does not conflict with any decision of this Court. See

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[8] NPS has been consistent in its treatment of navigable waters within national parks in Alaska. See 61 Fed. Reg. at 35,133-35,136 (explaining that changes in language of regulation were clarifications, designed to remove ambiguities in language). In any event, as the court of appeals noted (Pet. App. 28a n.7), the Secretary's view would be entitled to deference even if it reflected a change in position. See *National Cable & Telecomms. Ass'n* v. *Brand X Internet Servs.*, 545 U.S. 967, 981 (2005).

Sup. Ct. R. 10(a). And because no court in any jurisdiction has reached a conflicting decision, intervention is not required to maintain uniformity among federal courts (or between federal and state courts within Alaska). See *id.* 10(a) and (c).

This case does not involve a question so important that it should be decided by this Court in the absence of any disagreement. See Sup. Ct. R. 10(c). The question whether hovercraft may be operated on navigable waters within national parks' boundaries is not itself one of surpassing significance. And relatively few additional rules govern boating and water use in national parks—aimed at such objectives as safeguarding fish populations and water ecosystems, see generally 36 C.F.R. 3.1-.319.[9] The far-from-burdensome nature of these rules is exemplified by the State of Alaska's inability to identify any way in which the regulations either burden its activities or conflict with

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[9] Amicus State of Alaska suggests (Br. 2) that the decision below is one of exceptional importance because rural Alaskans "rely upon Alaska's unusual transportation thoroughfares to provide for their families." But ANILCA itself expressly addresses those needs, by protecting common means of transportation on these thoroughfares. 16 U.S.C. 3170(a) (stating that "the Secretary shall permit, on conservation system units * * * the use of snowmachines (during periods of adequate snow cover, or frozen river conditions in the case of wild and scenic rivers), motorboats, airplanes, and nonmotorized surface transportation methods for traditional activities (where such activities are permitted by this Act or other law) and for travel to and from villages and homesites"); cf. Alaska Amicus Br. 6 (noting that "[t]he primary means of transportation for rural Alaskans" are not hovercraft but "all-terrain vehicles; airplanes—generally regional, small bush plane, or private air service; snowmachines; and boats"). Similarly, ANILCA contains statutory protections of hunting, fishing, and subsistence-use activities. 16 U.S.C. 410hh-2, 3201; see 36 C.F.R. 242.25(*l*).

its own enactments. See Pet. App. 14a-20a; cf. Alaska Amicus Br. 17-18.

Petitioner and amici principally argue for review not because of these navigable-water rules themselves, but on the theory that the decision below subjects all privately held, state-held, and Native-held land within the National Park System to "plenary control of NPS, which prefers to use the Alaska wilderness strictly for conservation purposes." Pet. 19; see *ibid.* (asserting that ruling "concerns the regulatory disposition of more than 19 million acres of Alaskan land"); Pet. 20 (asserting that "Native Corporations will be foreclosed from developing roughly 30 percent of the land that Congress conveyed to them"); see also AHTNA Amicus Br. 5-9. But that argument fundamentally misunderstands both NPS's regulations and the decision below. It misunderstands NPS's regulations because, by their terms, NPS's rules apply only on "federally owned" lands and waters in national parks and on "navigable waters" in national parks, 36 C.F.R. 1.2(a)(1) and (3), and *not* on "non-federally owned lands and waters or on Indian tribal trust lands located within National Park System boundaries," except under the application of stringent criteria that NPS has almost never invoked, see 36 C.F.R. 1.2(b); note 1, *supra*. Thus, the decision allowing enforcement of NPS rules on navigable waters within park boundaries will not make NPS's rules applicable on privately held, state-held, or Native-held inholdings.

Petitioner's argument likewise reflects a misunderstanding of the decision below, which did not hold that the Secretary may enforce nationwide parks regulations on such privately held, state-held, or Native-held

lands in the future—if NPS dramatically shifts its regulatory approach. Any such regulation would have to rest on a grant of regulatory power. The decision below found an applicable grant in the water-specific statute that authorizes the Secretary to "[p]romulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States." Pet. App. 25a (brackets in original) (quoting 16 U.S.C. 1a-2(h)). But the decision below does not establish that NPS would have authority, under any statute, to extend the gamut of parks regulations to privately held, state-held, and Native-held inholdings. Nor does it resolve the constitutional avoidance arguments that might be made concerning construction of those statutes, if NPS sought to regulate not navigable waters, but private inholdings. Cf. *id.* at 33a-34a (noting that regulation of navigable waters is a traditional federal power). In any event, this Court's intervention is not necessary based on hypothesized future exercises of NPS jurisdiction. Were NPS to shift its regulatory approach, and a court to find the new approach statutorily authorized, this Court could take up challenges to NPS's regulation of privately held, state-held, and Native-held lands under ANILCA Section 103(c) at that time. Petitioner's challenge to the application of the far more limited regulations in effect on navigable waters in national parks within Alaska does not present a question of exceptional importance.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 2015